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13 **UNITED STATES DISTRICT COURT**
14 **DISTRICT OF NEVADA – LAS VEGAS**

15 **GERALDINE ROBINSON,**
16 **Individually and On Behalf of All**
17 **Others Similarly Situated,**

18 **Plaintiff,**

19 **v.**

20 **LOJACK CORPORATION,**

21 **Defendant.**

22 **Case No.:**

23 **CLASS ACTION**

24 **COMPLAINT FOR DAMAGES**
25 **AND INJUNCTIVE RELIEF**
26 **PURSUANT TO THE TELEPHONE**
27 **CONSUMER PROTECTION ACT,**
28 **47 U.S.C. § 227 ET SEQ.**

29 **JURY TRIAL DEMANDED**

INTRODUCTION

1. GERALDINE ROBINSON (“Plaintiff”), individually, and on behalf of all
2 others similarly situated, brings this Complaint for damages, injunctive
3 relief, and any other available legal or equitable remedies, resulting from the
4 illegal actions of LOJACK CORPORATION (“Defendant”), in negligently
5 and/or intentionally contacting Plaintiff on Plaintiff’s cellular telephone, in
6 violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et
7 seq., (“TCPA”), thereby invading Plaintiff’s privacy. Plaintiff alleges as
8 follows upon personal knowledge as to herself and her own acts and
9 experiences, and, as to all other matters, upon information and belief,
10 including investigation conducted by her attorneys.
11. The TCPA was designed to prevent calls like the ones described within this
12 complaint, and to protect the privacy of citizens like Plaintiff. “Voluminous
13 consumer complaints about abuses of telephone technology – for example,
14 computerized calls dispatched to private homes – prompted Congress to pass
15 the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).
16. In enacting the TCPA, Congress intended to give consumers a choice as to
17 how creditors and telemarketers may call them, and made specific findings
18 that “[t]echnologies that might allow consumers to avoid receiving such
19 calls are not universally available, are costly, are unlikely to be enforced, or
20 place an inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, §
21 11. Toward this end, Congress found that:
22 [b]anning such automated or prerecorded telephone calls
23 to the home, except when the receiving party consents to
24 receiving the call or when such calls are necessary in an
25 emergency situation affecting the health and safety of the
26 consumer, is the only effective means of protecting
27 telephone consumers from this nuisance and privacy
28 invasion.

1 *Id.* at § 12; *see also Martin v. Leading Edge Recovery Solutions, LLC*, 2012
 2 WL 3292838, at* 4 (N.D. Ill. Aug. 10, 2012) (citing Congressional findings
 3 on TCPA’s purpose).

- 4 4. Congress also specifically found that “the evidence presented to the
 5 Congress indicates that automated or prerecorded calls are a nuisance and an
 6 invasion of privacy, regardless of the type of call....” *Id.* at §§ 12-13. *See*
 7 *also, Mims*, 132 S. Ct. at 744.
 8 5. As Judge Easterbrook of the Seventh Circuit recently explained in a TCPA
 9 case regarding calls to a non-debtor similar to this one:

10 The Telephone Consumer Protection Act ... is well
 11 known for its provisions limiting junk-fax transmissions.
 12 A less-litigated part of the Act curtails the use of
 13 automated dialers and prerecorded messages to cell
 14 phones, whose subscribers often are billed by the minute
 15 as soon as the call is answered—and routing a call to
 16 voicemail counts as answering the call. An automated
 17 call to a landline phone can be an annoyance; an
 18 automated call to a cell phone adds expense to
 19 annoyance.

20 *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 638 (7th Cir. 2012).

- 21 6. The Ninth Circuit recently affirmed certification of a TCPA class action
 22 similar to this one in *Meyer v. Portfolio Recovery Associates, LLC*, __
 23 F.3d __, 2012 WL 4840814 (9th Cir. Oct. 12, 2012).

JURISDICTION AND VENUE

- 24 7. This Court has federal question jurisdiction because this case arises out of
 25 violation of federal law. 47 U.S.C. §227(b); *Mims v. Arrow Fin. Servs., LLC*,
 26 132 S. Ct. 740 (2012).
 27 8. Venue is proper in the United States District Court for the District of Nevada
 28 – Las Vegas pursuant to 18 U.S.C. § 1391(b) because Plaintiff resides in this
 judicial district, the harm to Plaintiff occurred in this judicial district, and

Defendant is subject to personal jurisdiction in this judicial district and in that State of Nevada because it conducts business there.

PARTIES

9. Plaintiff is, and at all times mentioned herein was, a citizen and resident of the State of Nevada. Plaintiff is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 153 (39).
 10. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and at all times mentioned herein was, a corporation whose primary corporate address is in the State of Massachusetts, at 40 Pequot Way, Canton MA 02021. Defendant is, and at all times mentioned herein was, a Massachusetts corporation and is a “person,” as defined by 47 U.S.C. § 153 (39). Defendant is a provider of tracking and recovery systems. Plaintiff alleges that at all times relevant herein Defendant conducted business in the State of Nevada and within this judicial district.

FACTUAL ALLEGATIONS

11. At all times relevant, Plaintiff was a citizen of the State of Nevada. Plaintiff is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 153 (10).
 12. Defendant is, and at all times mentioned herein was, a Massachusetts corporation and a “person,” as defined by 47 U.S.C. § 153 (39).
 13. At all times relevant Defendant conducted business in the State of Nevada and within this judicial district.
 14. Defendant specializes in stolen vehicle recovery by installing a traceable device in vehicles, and providing early warning recovery alerts by text, email or phone if a vehicle is moved without authorization.
 15. Defendant provides coverage throughout 28 states in the United States, including Nevada.

- 1 16. On or about November 19, 2012, Plaintiff received a prerecorded voice
2 message on her cellular telephone from Defendant regarding an “early
3 warning alert” alerting Plaintiff that her “vehicle may have been moved”
4 without authorization.
- 5 17. Subsequently, Plaintiff received multiple similar calls on her cellular
6 telephone from Defendant.
- 7 18. Plaintiff does not own any of Defendant’s products, nor has Plaintiff ever
8 used any of Defendant’s products.
- 9 19. Plaintiff has never provided Defendant with her cellular telephone number,
10 nor has Plaintiff given Defendant any form of consent to call her cellular
11 telephone at any time.
- 12 20. Defendant called Plaintiff on her cellular telephone number, ending in 6566,
13 from the telephone number (781) 302-4099.
- 14 21. Through this conduct, Defendant contacted Plaintiff on Plaintiff’s cellular
15 telephone regarding an unsolicited service via an automatic telephone
16 dialing system (“ATDS”) as defined by 47 U.S.C. § 227(a)(1), using an
17 “artificial or prerecorded voice” as prohibited by 47 U.S.C. § 227(b)(1)(A).
- 18 22. This ATDS has the capacity to store or produce telephone numbers to be
19 called, using a random or sequential number generator.
- 20 23. The telephone number Defendant called was assigned to a cellular telephone
21 service for which Plaintiff incurs a charge for incoming calls pursuant to 47
22 U.S.C. § 227(b)(1).
- 23 24. These telephone calls constituted calls that were not for emergency purposes
24 as defined by 47 U.S.C. § 227(b)(1)(A)(i).
- 25 25. Plaintiff did not provide Defendant or its agent prior express consent to
26 receive calls, including unsolicited prerecorded calls, to her cellular
27 telephone, pursuant to 47 U.S.C. § 227 (b)(1)(A).

- 1 26. These telephone calls by Defendant, or its agent, violated 47 U.S.C. §
2 227(b)(1).

3 **CLASS ACTION ALLEGATIONS**

- 4 27. Plaintiff brings this action on behalf of herself and on behalf of all others
5 similarly situated (“the Class”).

- 6 28. Plaintiff represents, and is a member of the Class, consisting of:

7 All persons within the United States who received any
8 telephone call from Defendant or its agent to said
9 person’s cellular telephone made through the use of any
10 automatic telephone dialing system or with an artificial
11 or prerecorded voice within the four years prior to the
filing of the Complaint.

- 12 29. Defendant and its employees or agents are excluded from the Class.
13 Plaintiff does not know the number of members in the Class, but believes the
14 Class members number in the several thousands, if not more. Thus, this
15 matter should be certified as a Class action to assist in the expeditious
litigation of this matter.

- 16 30. Plaintiff and members of the Class were harmed by the acts of Defendant in
17 at least the following ways: Defendant, either directly or through its agents,
18 illegally contacted Plaintiff and the Class members via their cellular
19 telephones by using a prerecorded telephone call through an ATDS, thereby
20 causing Plaintiff and the Class members to incur certain cellular telephone
21 charges or reduce cellular telephone time for which Plaintiff and the Class
22 members previously paid, and invading the privacy of said Plaintiff and the
23 Class members. Plaintiff and the Class members were damaged thereby.

- 24 31. This suit seeks only damages and injunctive relief for recovery of economic
25 injury on behalf of the Class, and it expressly is not intended to request any
26 recovery for personal injury and claims related thereto. Plaintiff reserves the
27 right to modify or expand the Class definition to seek recovery on behalf of
28

1 additional persons as warranted as facts are learned in further investigation
2 and discovery.

3 32. The joinder of the Class members is impractical and the disposition of their
4 claims in the Class action will provide substantial benefits both to the parties
5 and to the court. The Class can be identified through Defendant's records or
6 Defendant's agent's records.

7 33. There is a well-defined community of interest in the questions of law and
8 fact involved affecting the parties to be represented. The questions of law
9 and fact to the Class predominate over questions which may affect
10 individual Class members, including, but not limited to, the following:

- 11 a) Whether, within the four years prior to the filing of this Complaint,
12 Defendant or its agents placed prerecorded calls to the Class (other
13 than a message made for emergency purposes or made with the prior
14 express consent of the called party) using any ATDS, to any telephone
15 number assigned to a cellular phone service;
- 16 b) Whether Plaintiff and the Class members were damaged thereby, and
17 the extent of damages for such violation; and
- 18 c) Whether Defendant and its agents should be enjoined from engaging
19 in such conduct in the future.

20 34. As a person who received at least one unsolicited prerecorded call utilizing
21 an ATDS without Plaintiff's prior express consent, Plaintiff is asserting
22 claims that are typical of the Class. Plaintiff will fairly and adequately
23 represent and protect the interests of the Class in that Plaintiff has no
24 interests antagonistic to any member of the Class.

25 35. Plaintiff and the members of the Class have all suffered irreparable harm as
26 a result of the Defendant's unlawful and wrongful conduct. Absent a class
27 action, the Class will continue to face the potential for irreparable harm. In
28 addition, these violations of law will be allowed to proceed without remedy

1 and Defendant will likely continue such illegal conduct. Because of the size
2 of the individual Class member's claims, few, if any, Class members could
3 afford to seek legal redress for the wrongs complained of herein.

4 36. Plaintiff has retained counsel experienced in handling class action claims
5 and claims involving violations of the Telephone Consumer Protection Act.

6 37. A class action is a superior method for the fair and efficient adjudication of
7 this controversy. Class-wide damages are essential to induce Defendant to
8 comply with federal and California law. The interest of Class members in
9 individually controlling the prosecution of separate claims against Defendant
10 is small because the maximum statutory damages in an individual action for
11 violation of privacy are minimal. Management of these claims is likely to
12 present significantly fewer difficulties than those presented in many class
13 claims.

14 38. Defendant has acted on grounds generally applicable to the Class, thereby
15 making appropriate final injunctive relief and corresponding declaratory
16 relief with respect to the Class as a whole.

17 39. Plaintiff anticipates providing notice to the putative class members by direct
18 mail postcard notice and by internet website.

19 **FIRST CAUSE OF ACTION**

20 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**

21 **47 U.S.C. § 227 ET SEQ.**

22 40. Plaintiff incorporates by reference all of the above paragraphs of this
23 Complaint as though fully stated herein.

24 41. The foregoing acts and omissions of Defendant constitute numerous and
25 multiple negligent violations of the TCPA, including but not limited to each
26 and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

42. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq., Plaintiff and the Class are entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
43. Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

KNOWING AND/OR WILLFUL VIOLATIONS OF THE

TELEPHONE CONSUMER PROTECTION ACT

47 U.S.C. § 227 ET SEQ.

44. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

45. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

46. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq., Plaintiff and the Class are entitled to an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

47. Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests the Court grant Plaintiff and the Class members the following relief against Defendant:

**FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF
THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each Class member \$500.00 in statutory

damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
 - Any other relief the Court may deem just and proper.

**SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL VIOLATIONS OF
THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each Class member \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
 - Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
 - Any other relief the Court may deem just and proper.

TRIAL BY JURY

48. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: September 4, 2013

Respectfully submitted,

THE CLEARY LAW FIRM

By: /s/ Peter K. Cleary

PETER K. CLEARY

ATTORNEY FOR PLAINTIFF